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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert James GERNDT  
John Joseph SAYOVITZ

Serial No.: 09/240,524

Filing Date: 29 January 1999

Title: FLUID DISTRIBUTION SYSTEM FOR  
THERMAL TRANSFER ROLLERS

Group No.: 3743

Examiner: C. Atkinson

PROVISIONAL  
PETITION TO REVIVE UNINTENTIONALLY ABANDONED  
APPLICATION UNDER 37 C.F.R. § 1.137(b)

Mail Stop Petition

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Ladies and Gentlemen:

In response to the Opinion of the Board of Patent Appeals and Interferences mailed on 11 March 2004 and in anticipation of an Office Communication alleging that the above-identified U.S. Patent Application is abandoned for failure to timely pay the appeal brief fee, Applicants provisionally

03/26/2004 CNGUYEN 00000014 193550 09240524  
Sale Ref: 00000079 DAH: 193550 09240524  
01 FC:1453 1330.00 DA  
02 FC:1402 330.00 DA

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313 on

22 March 2004

03/26/2004 CNGUYEN 00000079 193550 09240524  
02 FC:1402 330.00 DA  
Date

Eric Kuschka  
Signature

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petition the Commissioner to revive the unintentionally abandoned application.

Applicants indicate below facts in support of the petition.

### **Appeal Brief and Appeal Brief Fee**

Applicants enclose herewith three (3) true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002. On 22 April 2003, Applicants filed with the U.S. Patent and Trademark Office a Response To The Response To Non-Responsive Brief, including three (3) true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002, and a check in the amount of \$320.00 to cover the Appeal Brief fee. If it is determined that an additional Appeal Brief fee is required, the Commissioner is authorized to charge any fee deficiency for the Appeal Brief fee of \$320.00 to Deposit Account No. 19-3550.

### **Petition Fee**

Because Applicants file this petition as a Provisional Petition To Revive Unintentionally Abandoned Application, in anticipation that the Examiner will mail an Office Communication alleging that the subject U.S. Patent Application is abandoned for failure to timely pay the appeal brief fee, Applicants do not enclose with this petition a check for the Petition Fee of \$1,330.00 under 37 C.F.R. § 1.17(m). If it is determined by the Examiner that the subject U.S. Patent Application is abandoned, the Commissioner is authorized to charge the Petition Fee of \$1,330.00

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under 37 C.F.R. § 1.17(m) to Deposit Account 19-3550. A duplicate of this Petition is enclosed.

### **Statement**

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional. The following facts support Applicants' statement.

1. On 22 March 2002, Examiner Atkinson mailed a final Office Action, in which Claims 1-25 were rejected. (Paper No. 27)

2. On 22 May 2002, Applicants filed a Request for Reconsideration in response to the final Office Action mailed 22 March 2002. (Paper No. 28)

3. On 10 June 2002, Examiner Atkinson mailed an Office Communication, including an Advisory Action indicating that Applicants' reply to the final Office Action has been considered but is not deemed to place the application in condition for allowance. (Paper No. 29)

4. On 24 June 2002, Applicants filed a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences, wherein the Commissioner was authorized to charge *any deficiencies in fees* which may be required, or credit any overpayment to Deposit Account No. 19-3550. (Paper No. 30)

5. On 16 August 2002, Applicants filed with the U.S. Patent and Trademark Office an Appeal Brief under 37 C.F.R. § 1.192. (Paper No. 31)

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6. On 05 November 2002, Examiner Atkinson filed with the Board of Patent Appeals and Interferences an Examiner's Answer in response to Applicants' Appeal Brief. (Paper No. 32)

7. On 19 December 2002, Applicants filed with the U.S. Patent and Trademark Office a Reply Brief under 37 C.F.R. § 1.193. (Paper No. 33)

8. On 14 January 2003, Examiner Atkinson mailed an Office Communication indicating that Applicants' Reply Brief filed on 26 December 2002 has been entered and considered, and that the application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal. (Paper No. 34)

9. On 11 March 2003, the Board of Patent Appeals and Interferences mailed an Order Returning Undocketed Appeal To Examiner, stating that there is no indication that the Appeal Brief fee had been received and/or applied and that the Board was able to locate only one copy of the Appeal Brief instead of the required three copies pursuant under 37 C.F.R. § 1.192. (Paper No. 35)

10. On 31 March 2003, Examiner Atkinson mailed an Office Communication entitled "Response to Non-Responsive Brief" alleging that the Appeal Brief and Notice of Appeal are non-responsive to the prior Office Action because no Appeal Brief fee has been paid and there is only one copy of the Appeal Brief. Examiner Atkinson indicated that "Since the response appears to be *bona fide*, but through an apparent oversight or inadvertence failed to provide a complete

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response, applicant is required to complete the response within a time limit of one month from the date of this letter or within the time remaining in the response period of the last Office action, whichever is longer.” (Paper No. 36)

11. On 22 April 2003, Applicants filed with the U.S. Patent and Trademark Office a Response To The Response To Non-Responsive Brief, including three true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002, and a check in the amount of \$320.00 to cover the Appeal Brief fee, authorizing the Commissioner to charge any deficiency or to credit any overpayment to Deposit Account No. 19-3550. (Paper No. 37)

12. On 09 July 2003, Examiner Atkinson mailed an Office Communication indicating that “The reply brief filed 5/1/2003 has corrected the non-responsiveness and has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.” (Paper No. 38)

13. On 21 January 2004, the Board of Patent Appeals and Interferences mailed a Docketing Notice indicating that “Application 09/240,524 was received from the Technology Center at the Board on December 8, 2003 and has been assigned Appeal No: 2004-0342.” (Paper No. 39)

14. On 11 March 2004, The Board of Patent Appeals and Interferences mailed an Opinion in which the Board remanded “this application to the

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examiner to determine if the appeal should be dismissed for failure to timely pay the appeal fee, and if so, to determine if this application is abandoned.” (Paper No. 40)

15. On 15 March 2004, Applicants received the Opinion from the Board of Patent Appeals and Interferences.

### Conclusion

On remand, if the Examiner determines that the subject U.S. Patent Application is abandoned for failure to timely pay the appeal brief fee, the Commissioner is authorized to charge the Petition Fee of \$1,330.00 under 37 C.F.R. 1.17(m), and any fee deficiency, to Deposit Account 19-3550. Applicants respectfully request that this petition be granted. Further, if it is determined that an additional Appeal Brief fee is required, the Commissioner is authorized to charge any fee deficiency for the Appeal Brief fee of \$320.00 to Deposit Account No. 19-3550. Should the Director require additional information regarding whether the delay was unintentional, the undersigned attorney can be contacted at (847) 490.1400.

Respectfully submitted,



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